

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of)	
)	
Marc A. JURGOVAN et al.)	
)	Examiner: D. Becker
Serial No.: 09/372,646)	
)	Group Art Unit: 1761
Filed: August 12, 1998)	
)	
For: FLEXIBLE PACKAGE HAVING A)	
RE-CLOSABLE ZIPPER)	

DECLARATION UNDER 37 C.F.R. § 1.131

We, Marc A. Jurgovan and Martin B. Dierl, the inventors in the above-captioned patent application, hereby respectfully submit this declaration to overcome the primary reference cited by the Examiner in the Office Action of May 10, 2000, namely, U.S. Patent No. 6,030,122 to Ramsey et al., having a filing date of March 6, 1998. To that end, we hereby declare as follows:

1. A laboratory notebook was kept by us in connection with the development of the subject matter of this application.
2. During the period of time the subject matter of this application was being developed, we were employed by Frito-Lay, Incorporated of Plano, Texas, a subsidiary of Recot, Incorporated, the assignee of this application and the parent application, 09/079,382 (now U.S. Patent No. 5,972,396).

3. Copies of certain pages of that notebook, which were prepared prior to March 6, 1998, the filing date of the Ramsey et al. '122 patent, and which were contemporaneously signed by each of us, are attached to this declaration at Exhibit A.

4. These pages demonstrate that we had conceived the subject matter of the claims of this application prior to March 6, 1998. In particular, the attached handwritten notes reflect that we had conceived a snack food bag having a reclosable zipper and which was pinch-grip openable.

The notes state:

CONCEPT: M. DIERL & M. JURGOVAN
FOR PINCH GRIP, EQUALIZE INTERNAL AND EXTERNAL
OPENING FORCES TO ALLOW FOR BAG OPENING FROM
THE BOTTOM (INTERNAL (PRODUCT) SIDE WITHOUT
STRIPPING OFF ZIPPER ON UNSUPPORTED/HINGED SIDE

5. Moreover, the sheets attached to the handwritten notes show drawings illustrating various configuration options (OPTION 1-OPTION 5) that were conceived and evaluated. The drawings show configurations substantially similar to drawings of this application (see, e.g., Figs 3-5 of this application). The attached hand-written notes make specific "Reference" to "Standard Film Option 3 on attached deck" (See encircled note on left side of page) . Referring, for example, to the drawing illustrating OPTION 3, on which reference characters corresponding to the reference characters used in this application have been added, the drawing shows the zipper [40] including male member [40-1] and female member [40-2], a male projection [43-1], a female socket [43-2], a left flange [41-1], a right flange [41-2], central sections [S] behind the socket [43-2] and the projection [43-1], and sealant layers [C].

6. Also, the five options outlined reflect configurations that support the claims of this application. With respect to OPTION 3, the following features of the bag, and their respective sizes, are listed progressing from the top of the bag to the bottom::

STANDARD MATL (OPTION 3)

- ½" seal
- ½" zipper flange Male/Female side
- 1/8" zipper
- ½" zipper flange Male side
- 20" bag (body)
- ½" bottom seal

7. In the parlance of Frito-Lay, the term "Standard Material" meant, at the time of development of the subject matter of this application (and still means today), a laminated film having outer and inner propylene layers with an intervening polyethylene layer. When a seal is formed with such a film, the opposing inner layers of the front and back walls are sealed together, and, when the seal is broken, the inner layers delaminate from the outer layers, so that the outer appearance of the bag is substantially intact. This is consistent with the film description provided in the present application, at for example, page 11, third full paragraph.

8. Independent claim 1 is set forth in bold below, with the support for each recited element set forth in brackets below the corresponding claim element.

Claim 1:

In combination:

a) a flexible package having

a elastomeric front wall and an elastomeric rear wall;

[OPTION 3 was snack food bag formed from "STANDARD MATL" (material), which, as described in ¶ 7 above, is a "flexible packaging having [an] elastomeric front wall and an elastomeric rear wall".]

said front wall and said rear wall being sealed together at a top seal;

[A "seal" at the top of the bag is a listed feature of OPTION 3. (see ¶6 above)]

a first zipper part attached to an inside surface of said front wall and having a first engagement member facing said rear wall;

[A "zipper" is a listed feature of OPTION 3 below the seal. (see ¶6 above). The figure illustrates that the zipper includes a male (i.e., a first engaging) part.]

a second zipper part attached to an inside surface of said rear wall and having a second engagement member facing said front wall;

[A "zipper" is a listed feature of OPTION 3 below the seal. (see ¶6 above). The figure illustrates that the zipper includes a female (i.e., a second engaging) part.]

said first and second engagement members being engaged together;

[The figure associated with OPTION 3 illustrates that the first and second engaging members are engaged with one another]

said top seal being manually pinch-grip openable and said first and second engagement members being manually pinch-grip openable under a pinch-grip pulling force applied to said front and rear walls below said engagement members;

[The attached hand written notes, as quoted in ¶ 4 above, make reference to pinch-grip opening from the product side, which would be below the engagement members (i.e., below the zipper).

Furthermore, within the OPTION 3 description, under the heading "POSITIVES", it is stated that the bag of OPTION 3 permits "Pinch grip opening (usual for potato chips)". It is also stated that "No perfering" (i.e., no perforating) is necessary to permit the pinch-grip opening.]

said front and rear walls having a sufficient strength to resist tearing and deformation under the application of said pinch-grip pulling force during pinch-grip opening; and

[This is a reference to the relative sealing strength of the zipper as compared to the strength of the bag wall material to which the zipper components are secured. If the strength of the zipper is greater than the strength of the bag wall material, upon attempting to open the bag by a pinch-grip method, one or the other of the zipper components will tear away from its respective bag wall, rather than the two zipper components disengaging from one another. If one or the other zipper component tears away from its respective wall, the zipper can no longer be used to re-seal the bag. Thus, we recognized that the bag wall material must have a strength greater than the holding strength of the interengaged zipper components, so that it could withstand pinch grip opening. This is reflected in the statement quoted above in paragraph 4]

b) a food product stored inside said package below said first and second engagement members.

[The food product is stored in the "bag (body)" below the "zipper", i.e., there is no intervening seal between the zipper and the storage portion of the bag.]

9. Independent claim 17, as amended in the Amendment filed herewith, is set forth in bold below, with the support for each recited element set forth in brackets below the corresponding claim element.

In combination:

a) a flexible package, including front and rear walls, said front and rear walls being laminated plastic walls including at least one inner sealable layer and at least one outer wall layer,

[A snack food bag, such as the one we had conceived, inherently includes front and rear walls, as reflected in the separate male and female portions of the zipper to be attached to different respective walls of the bag. As explained above in paragraph 7, the "standard

material" of which, e.g., the bag of OPTION 3 was to be made, was (and still is) a laminated plastic film having at least one inner sealable layer and at least one outer wall layer.]

a bottom seal formed between lower sides of said front and rear walls;

[The list of features of the bag of OPTION 3, as quoted above in paragraph 6, includes a "bottom seal" below the "bag (body)" portion.]

a top seal formed between upper sides of said front and rear walls, said top seal including a seal between said inner sealable layers;

[The list of features of the bag of OPTION 3, as quoted above in paragraph 6, includes a "seal" as the first (i.e., topmost) feature on the list. As explained above in paragraph 7, a seal using the "standard material" of which, e.g., the bag of OPTION 3 was to be made, would constitute a seal between the respective inner layers of the front and rear walls.]

a zipper located within said package proximate said top seal, said zipper having a first zipper part having a first engagement member extending lengthwise along said zipper part and a widened base having at least two points of sealant behind said base;

[A "zipper" is a listed feature of OPTION 3 below the seal. (see ¶6 above). The figure associated with OPTION 3 illustrates that the zipper includes a male (i.e., a first engaging) part and that the male part has a widened base with three points of sealant: a central sealant section S and two sealant sections C.]

said zipper also having a second zipper part having a second engagement member extending lengthwise along said zipper part and a widened base having at least two points of sealant behind said base;

[A "zipper" is a listed feature of OPTION 3 below the seal. (see ¶6 above). The figure associated with OPTION 3 illustrates that the zipper includes a female (i.e., a second engaging) part and that the

female part has a widened base with two points of sealant: a central sealant section S and one sealant section C.]

said first engagement member being engaged with said second engagement member;

[The figure associated with OPTION 3 illustrates that the first and second engagement members are engaged with one another]

said at least two points of sealant on said first zipper part being sealed to said inner layer of one of said front and rear walls and said at least two points of sealant on said second zipper part being sealed to the inner layer of the other of said front and rear walls;

[As shown in the figure associated with OPTION 3, one of the zipper components is attached to one of the walls of the package, and the other component is attached to the other wall.]

said seal between said inner sealable layers being openable by de-lamination and said engagement between said engagement members of said zipper being disengaged upon the application of a predetermined pinch-grip pulling force; and

[As explained above in paragraph 7, a seal between the inner layers of a standard material is broken by delamination of the inner seals. Furthermore, within the OPTION 3 description, under the heading "POSITIVES", it is stated that the bag of OPTION 3 permits "Pinch grip opening (usual for potato chips)". It is also stated that "No perfining" (i.e., no perforating) is necessary to permit the pinch-grip opening.]

b) food product stored within said package between said closed zipper and said bottom seal.

[The food product is stored in the "bag (body)" below the "zipper" (i.e., there is no intervening seal between the zipper and the storage portion of the bag) and above the "bottom seal".]

10. This current application is a continuation application from the parent application 09/079,382 (now U.S. Patent No. 5,972,396), having a filing date of May 15, 1998.

11. During the period from prior to March 6, 1998 until May 15, 1998, we diligently worked with our in-house and outside patent counsel to prepare and file the patent application.
12. Preparation of the patent application began before March 6, 1998.
13. In April and May of 1998, several telephone conferences were held with our outside patent counsel to discuss the invention and the patent application which was being prepared.
14. Marc Jurgovan had a telephone conference with outside patent counsel regarding the application on or about March 23, 1998.
15. On or about April 23, 1998, Marc Jurgovan communicated to outside patent counsel our comments regarding the application.
16. On or about May 14, 1998, Marc Jurgovan communicated with outside patent counsel regarding final revisions to the application.
17. A final draft of the application, along with an Assignment and Inventors' Declaration, was forwarded to us by outside patent counsel on May 14, 1998.
18. We reviewed the application and reviewed and signed the accompanying documents and returned them to patent counsel in Washington, D.C. for filing in the U.S. Patent and Trademark Office May 15, 1998.

DECLARATION UNDER 37 C.F.R. § 1.68

All statements made herein of our own knowledge are true and all statements made on information and belief are believed to be true. We understand that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001) and may jeopardize the validity of this application or any patent issuing thereon.

Marc A. Jurgovan

Date

Martin B. Dierl

Date

11. During the period from prior to March 6, 1998 until May 15, 1998, we diligently worked with our in-house and outside patent counsel to prepare and file the patent application.
12. Preparation of the patent application began before March 6, 1998.
13. In April and May of 1998, several telephone conferences were held with our outside patent counsel to discuss the invention and the patent application which was being prepared.
14. Marc Jurgovan had a telephone conference with outside patent counsel regarding the application on or about March 23, 1998.
15. On or about April 23, 1998, Marc Jurgovan communicated to outside patent counsel our comments regarding the application.
16. On or about May 14, 1998, Marc Jurgovan communicated with outside patent counsel regarding final revisions to the application.
17. A final draft of the application, along with an Assignment and Inventors' Declaration, was forwarded to us by outside patent counsel on May 14, 1998.
18. We reviewed the application and reviewed and signed the accompanying documents and returned them to patent counsel in Washington, D.C. for filing in the U.S. Patent and Trademark Office May 15, 1998.

DECLARATION UNDER 37 C.F.R. § 1.68

All statements made herein of our own knowledge are true and all statements made on information and belief are believed to be true. We understand that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001) and may jeopardize the validity of this application or any patent issuing thereon.



Marc A. Jurgovan

10/10/2000

Date



Martin B. Dietl

10/10/2000

Date

Exhibit A

DATE

SUBJECT

BAG RECLOSURES

PROJECT NO.

7578

5

NOTE

CONCEPTS PRESENTED WK OF

, MINGRIIP CONTACTED ON

(ART MALL)

CONCEPT

: ~~44~~ M. DIERL & M. JURGOVAN

FOR PINCH GRIP, EQUALIZE INTERNAL & EXTERNAL
OPENING FORCES TO ALLOW FOR BAG OPENING FROM
THE BOTTOM (INTERNAL (PRODUCT) SIDE WITHOUT
STRIPPING OFF ZIPPER ON UNSUPPORTED (HINGED) SIDE

Reference

Premium (Peel Seal)
options 2 on
attached presentation
deck

Standard Film
Option 3 on
attached deck

CURRENT : 2lb EXTERNAL (CONSUMER SIDE)
8lb INTERNAL (PRODUCT SIDE)

PROPOSED : 2lb EXTERNAL
2lb INTERNAL

TRY CONCEPT FOR PREMIUM (PEEL SEAL) FILM
& STANDARD FILM TO PREVENT STRIPPING
ZIPPER OFF WHEN OPENING PACKAGES USING
PINCH GRIP METHOD

CONCEPT 2 : M. DIERL & MICHAEL FOLEY

Reference
options
4 & 5
on presentation
deck

Run graphics inverted 180°, so that zipper is inverted on package
- Withstands initial pinch grip, unknown with repeated opening
from top of package (strips zipper?)

WITNESSED AND UNDERSTOOD

SIGNED

North Beach

DATE

SIGNED

Mace Jones

DATE

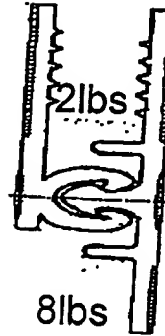
SUBJECT *AA (ECLIPSE)*

PROJECT *7578*

32

► PREMIUM MATERIAL (OPTION 1)

- 1/4" seal
- 1/16" perf
- 1/2" unsealed
- 1/4" sealed
- 1/2" zipper flange Male/Female side
- 1/8" zipper
- 1/2" zipper flange Male side
- 20" bag (body)
- 1/2" bottom seal



► POSITIVES

- Traditional reclosable perf/peel system
- Meets current test market schedule

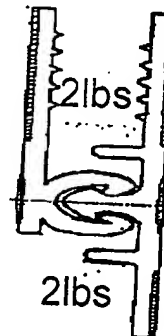
► NEGATIVES

- Must reeducate the consumer to open the bag the 1st time
- Needs perf (Tamper Evidence)
- Doubles film cost
- Increases length of bag the most
- No clear matl solution



► PREMIUM MATERIAL (OPTION 2)

- 1/4" seal
- 1/16" perf
- 1/2" unsealed
- 1/4" sealed
- 1/2" zipper flange Male/Female side
- 1/8" zipper
- 1/2" zipper flange Male side
- 20" bag (body)
- 1/2" bottom seal



► POSITIVES

- Traditional reclosable perf/peel system
- Pinch grip opening (usual for potato chips)

► NEGATIVES

- Zipper may come apart when traveling over the former (tes)
- Pinch grip opening may pull off female side (Test week of)
- Needs perf (Tamper Evidence)
- Doubles film cost
- Increases length of bag the most
- No clear matl solution



WITNESSED AND UNDERSTOOD

SIGNED *North A. Davis*

SIGNED

DATE

DATE

SIGNED

Ann A. [Signature]

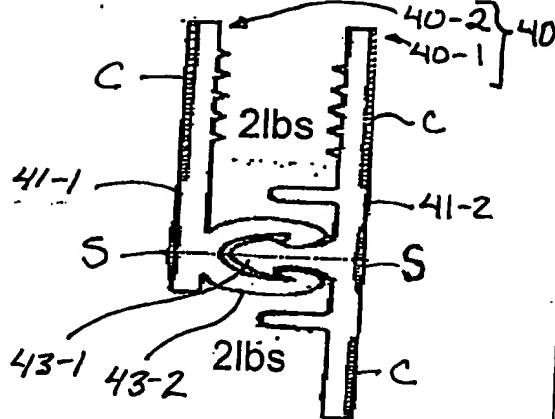
DATE

SUBJECT (1A) ENCLOSURES

PROJ CT NO. 7578

STANDARD MATL (OPTION 3)

- 1/2" seal
- 1/2" zipper flange Male/Female side
- 1/8" zipper
- 1/2" zipper flange Male side
- 20" bag (body)
- 1/2" bottom seal



POSITIVES

- Uses standard material
- Pinch grip opening (usual for potato chips)
- Clear material is available
- Uses 3/4 inch less material than options 1 & 2
- No perfering

NEGATIVES

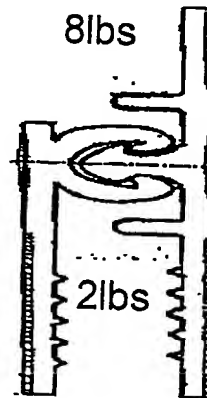
- Zipper may come apart when traveling over the former (test)
- Pinch grip opening may pull off female side (test)



STANDARD MATL (OPTION 4)

Graphics Inverted

- 1/2" top seal
- 1/2" zipper flange Male/Female side
- 1/8" zipper
- 1/2" zipper flange Male side
- 20" bag (body)
- 1/2" bottom seal



POSITIVES

- Uses standard material
- Pinch grip opening (usual for potato chips)
- Clear material is available
- Uses 3/4 inch less material than options 1 & 2
- No perfering

NEGATIVES

- Can we educate the consumer to reuse the bag by pinch grip opening



WITNESSED AND UNDERSTOOD

SIGNED

SIGNED

DATE

DATE

SIGNED

DATE

DATE

SUBJECT

Bk. RECLOSURE

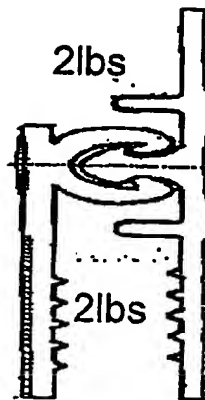
PROJECT NO.

578

► STANDARD MATL (OPTION 5)

Graphics Inverted

- 1/2" top seal
- 1/2" zipper flange Male/Female side
- 1/8" zipper
- 1/2" zipper flange Male side
- 20" bag (body)
- 1/2" bottom seal



► POSITIVES

- Uses standard material
- Pinch grip opening (usual for potato chips)
- Clear Material is available
- Uses 3/4 inch less material
- No perfling

► NEGATIVES

- Zipper may come apart when traveling over the former (ies)
- Pinch grip opening may pull off female side of zipper on reuse (ie



RECLOSURE OPTIONS SUMMARY

Options	Bag Length	Film Cost	Perf. Rec'd	Educate Consumer Initial Opening	Educate Consumer on Reopening	Needs New Zipper (Test Week)	Meets Timing	Clear Option Available
1								
2								
3								
4								
5								



WITNESSED AND UNDERSTOOD

SIGNED

SIGNED

DATE

DATE

SIGNED

DATE